

FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Market Disputes Resolution Division  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

August 7, 2019

Copies sent by E-mail

NOTICE OF FORMAL COMPLAINT

AT&T Services, Inc. and AT&T Corp., )  
 )  
Complainants, )  
 )  
v. ) Proceeding Number 19-222  
 ) Bureau ID Number EB-19-MD-007  
 )  
123.Net (d/b/a Local Exchange Carriers of )  
Michigan and/or Prime Circuits) )  
 )  
Defendant. )

Christi Shewman  
Gary L. Phillips  
David L. Lawson  
AT&T Services, Inc.  
1120 20<sup>th</sup> Street, N.W.  
Washington, DC 20036  
202-457-3090

Brian A. McAleenan  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7000  
(312) 853-7036 (fax)

Michael J. Hunseder  
Marc A. Korman  
SIDLEY AUSTIN LLP  
1501 K Street NW  
Washington, DC 20005  
[mhunseder@sidley.com](mailto:mhunseder@sidley.com)  
(202) 736-8000  
(202) 736-8711 (fax)

Counsel for Complainant

Joseph Bowser  
Roth Jackson Gibbons Conklin, P.C.  
1419 Summit Ave., Suite 102  
Richmond, VA 23219  
[jbowser@rothjackson.com](mailto:jbowser@rothjackson.com)  
(804) 441-8701

Counsel for Defendant

Dear Counsel:

On August 5, 2019, AT&T Services, Inc. and AT&T Corp. (collectively AT&T) filed with this Commission a formal complaint against 123.Net (d/b/a Local Exchange Carriers of Michigan and/or Prime Circuits) (LEC-MI) under section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.<sup>1</sup> LEC-MI should have a copy of the Complaint as served by FedEx per agreement of the parties in satisfaction of 47 CFR § 1.734(c). If that is not the case, LEC-MI immediately should contact Commission counsel.

Adam Suppes and I are Commission counsel for this proceeding. My phone number is (202) 418-7335, and my e-mail address is lisa.saks@fcc.gov. Adam Suppes's phone number is (202) 418-0324, and his e-mail address is adam.suppes@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740.<sup>2</sup>

### **Schedule for this Proceeding**

The schedule for this proceeding is set forth below. All filings must comply with the Commission's formal complaint rules and with this Notice.<sup>3</sup>

1) By September 4, 2019, LEC-MI must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by LEC-MI must be filed and served concurrently with the answer. 47 CFR §1.730(a).<sup>4</sup>

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<sup>1</sup> See Formal Complaint of AT&T Services, Inc. Proceeding Number 19-222, Bureau ID Number EB-19-MD-007 (filed Aug. 5, 2019) (Complaint).

<sup>2</sup> See also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

<sup>3</sup> Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. See 47 CFR §1.721(g), (k).

<sup>4</sup> Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .").

2) By September 16, 2019, AT&T must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any request for interrogatories posed by AT&T must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within seven calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days of service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements.<sup>5</sup> See 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by October 3, 2019. The parties may submit these two joint statements in a single document if each is separately identified therein. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** See *Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97.

5) An initial status conference in this proceeding has been scheduled for October 17, 2019 at 11:00 a.m., at the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. See 47 CFR § 1.733. We require each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. After clearing security at the 12<sup>th</sup> Street entrance, the parties should call Adam Suppes at 418-0324 to be escorted to the conference. See 47 CFR § 1.733. **The parties also should be prepared to spend at least 4 hours in conference.**

6) We expect final action on the Complaint within 270 days of its filing. See 47 CFR § 1.740(a). The Enforcement Bureau has discretion to pause the 270-day review period where actions outside the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery, briefing or the submission of information requested by the Bureau. See 47 CFR § 1.740(b); *Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23. The Division intends to meet the 270-day deadline for final action and will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by November 21, 2019. The parties and their counsel should plan their schedules accordingly. Any request for extension of the scheduled filing dates must be for good cause shown, and the parties should understand that the grant of such request will result in an adjustment to the deadline for final action based on the length of the extension.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission's rules, and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. See 47 CFR § 1.731. A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is

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<sup>5</sup> Parties should attempt to resolve any discovery disputes prior to the submission of the joint statement(s). Staff will address any unresolved discovery disputes at the status conference. Staff generally will consider motions to compel discovery filed pursuant to sections 1.729(b) and 1.730(h), 47 CFR §§ 1.729(b), 1.730(h), only after a party fails to comply with discovery ordered at the status conference.

confidential. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. See 47 CFR § 1.731(a)(1). In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as “Courtesy Staff Copies. EB-MDRD, 202-418-7330.” See 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. See 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. See 47 U.S.C. § 154(i); 47 CFR § 1.734(e). See *Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission’s decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3 and 1.720-1.740 of the Commission’s rules, 47 CFR §§ 1.3, 1.720-1.740, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Lisa Saks  
Assistant Division Chief, Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission